

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of)	
)	
Connect America Fund)	WC Docket No. 10-90
)	
Universal Service Reform – Mobility Fund)	WT Docket No. 10-208
)	
Petition for Waiver of Windy City Cellular, LLC)	
)	
)	

ORDER

Adopted: June 12, 2012

Released: June 12, 2012

By the Chief, Wireless Telecommunications Bureau:

1. By this Order, the Wireless Telecommunications Bureau (Bureau) approves limited, interim relief from Section 54.307(e) of the Commission’s rules to provide additional high-cost universal service support to Windy City Cellular, LLC (WCC).¹ As discussed below, the record on the petition is not yet closed, and this petition is related to a later one filed by WCC’s parent company, incumbent local exchange carrier Adak Eagle Enterprises (AEE).² We grant this limited, interim relief to support the status quo for wireless service in WCC’s service area during the pendency of our review.

I. Background

2. In the *USF-ICC Transformation Order*, the Commission adopted comprehensive reforms to modernize the universal service system.³ Among other things, the *Order* eliminated the identical

¹ Petition for Waiver of Windy City Cellular, LLC, WC Docket No. 10-90 *et al.* (filed Apr. 3, 2012) (WCC Petition or Petition). WCC made subsequent filings on April 6, April 9, April 12, May 4, May 17, May 21, May 24, and June 10. *See* Notice of *Ex Parte*, WC Docket No. 10-90 *et al.* (filed Apr. 6, 2012); Notice of *Ex Parte*, WC Docket No. 10-90 *et al.* (filed Apr. 9, 2012); Response to Request for Additional Information and Supplement, WC Docket No. 10-90 *et al.* (filed Apr. 12, 2012) (WCC April 12 Response and Supplement); Notice of *Ex Parte* and Supplement, WC Docket No. 10-90 *et al.* (filed May 4, 2012) (WCC May 4 Supplement); Notice of *Ex Parte*, WC Docket No. 10-90 *et al.* (filed May 17, 2012); Notice of *Ex Parte* in WC Docket No. 10-90 *et al.* (filed May 21, 2012) (WCC May 21 *Ex Parte*); Reply Comments of Windy City Cellular, LLC, WC Docket No. 10-90 *et al.* (filed May 24, 2012); Notice of *Ex Parte* in WC Docket No. 10-90 *et al.* (filed June 10, 2012) (WCC June 10 *Ex Parte*).

² WCC’s parent company, AEE, filed its own petition for waiver on May 9, 2012. That petition was rescinded and refiled on May 22, 2012 (AEE Petition). The refiled petition was put out for Public Notice on May 31, 2012. *See Wireline Competition Bureau Seeks Comment on Adak Eagle Enterprises, LLC d/b/a Adak Telephone Utility Petition for Waiver of Certain High Cost Universal Service Rules*, Public Notice, DA 12-865 (May 31, 2012) (seeking comments by July 2, 2012 and reply comments by July 16, 2012). *See also* discussion *infra* at ¶ 11.

³ *See Connect America Fund*, WC Docket No. 10-90 *et al.*, Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd 17663 (2011) (*USF-ICC Transformation Order* or *Order*); *pets. for review pending sub nom. In re: FCC 11-161*, No. 11-9900 (10th Cir. filed Dec. 8, 2011); *Connect America Fund*, WC Docket No. 10-90

(continued....)

support rule, which had provided support to competitive Eligible Telecommunications Carriers (ETCs) based on the same per-line amount as the incumbent local exchange carrier serving the same area.⁴ The Commission found that “[t]he support levels generated by the identical support rule bear no relation to the efficient cost of providing mobile voice service in a particular geography.”⁵ Instead, the Commission will transition support for mobile service over time to a new, comprehensive Connect America Fund (CAF).

3. The Commission adopted a five-year period to phase down existing competitive ETC support and transition to the CAF. As part of the phase down, it froze existing support for competitive ETCs at the 2011 baseline, or \$3,000 per line per year, whichever was lower, and implemented a 20 percent annual reduction in support, beginning July 1, 2012, and ending July 1, 2016. The Commission adopted a slower transition path for competitive ETCs serving remote parts of Alaska, in order to preserve newly initiated services and facilitate additional investment in still unserved and underserved areas.⁶ Specifically, the Commission delayed the phase down for competitive ETCs serving remote parts of Alaska by two years, but implemented a cap to restrict growth of the fund during that time (Remote Alaska Cap or Cap).⁷ As part of the Cap, support to competitive ETCs serving remote parts of Alaska was limited to \$3,000 per line per year (equivalent to \$250 per line per month) beginning January 1, 2012.⁸

4. The Commission also provided guidance on how “any carrier negatively affected by the universal service reforms ... [could] file a petition for waiver that clearly demonstrates that good cause exists for exempting the carrier from some or all of those reforms, and that waiver is necessary and in the public interest to ensure that consumers in the area continue to receive voice service.”⁹ The Commission stated that it did not “expect to grant waiver requests routinely,” and cautioned petitioners that any requests would be subject to a “rigorous, thorough, and searching review comparable to a total company earnings review.”¹⁰ The Commission provided guidance on the types of information that would be relevant for such waiver requests and delegated authority to the Bureau and the Wireline Competition Bureau (WCB) to rule on all such requests.¹¹ The Commission directed the Bureaus to prioritize review of any applications for waiver filed by providers serving Tribal lands and insular areas – such as WCC – and to complete their review of petitions from providers serving Tribal lands and insular areas within 45 days of the record closing on such petitions.¹²

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et al., Order on Reconsideration, 26 FCC Rcd 17633 (2011); *Connect America Fund*, WC Docket No. 10-90 *et al.*, Second Order on Reconsideration, FCC 12-47 (rel. Apr. 25, 2012); *Connect America Fund*, WC Docket No. 10-90 *et al.*, Third Order on Reconsideration, FCC 12-47 (rel. May 14, 2012).

⁴ *USF-ICC Transformation Order* at ¶ 164.

⁵ *Id.* at ¶ 504.

⁶ *Id.* at ¶ 529.

⁷ *Id.*

⁸ *Id.* See also n. 880, 47 C.F.R. § 54.307(e)(v). Where necessary, a reduction factor is applied to ensure that the total level of support does not exceed the Remote Alaska Cap. *Id.* The Universal Service Administrative Company (USAC) calculated a roughly 7.5% reduction factor for third quarter 2012. See <http://usac.org/about/tools/fcc/filings/2012/q3.aspx>. The projection for fourth quarter 2012 is not yet available, but is not likely to exceed 10%.

⁹ *USF-ICC Transformation Order* at ¶ 539.

¹⁰ *Id.* at ¶ 540.

¹¹ *Id.* at ¶¶ 542 and 544.

¹² *Id.* at ¶ 544.

5. On April 3, 2012, WCC filed a petition for waiver of Section 54.307(e) of the Commission's rules relating to the cap on interim USF support. WCC provides wired broadband services and is one of two wireless providers on Adak Island, located near the western tip of the Aleutian Islands, approximately 1,200 miles southwest of Anchorage. Roughly 330 people live on Adak Island, as well as a number of seasonal workers and contractors. WCC reports that the area is characterized by extremely challenging service conditions.¹³

6. General Communication, Inc. (GCI), under the brand name Alaska Wireless, also provides service to Adak Island. GCI claims that it provides wireless service to "all or nearly all of the inhabited portions of Adak Island."¹⁴ WCC nevertheless claims that it provides service where there is no other provider, including parts of the Aleutian Wilderness and the Bering Sea.¹⁵ Each company has its own cell tower in the downtown residential area of the island. WCC's additional coverage arises primarily because of a new cell tower that WCC erected in January 2012 at White Alice. The Bureau has requested traffic data for this tower. In projections published by USAC for the first quarter of 2012, WCC reported 92 lines; GCI reported 134 lines for that same period.¹⁶

7. WCC noted that, as a result of the implementation of the Cap, its monthly USF support decreased by approximately 84 percent, from \$136,344 in December 2011 to \$22,356 in January 2012. WCC therefore sought support of \$880.09 per line per month until "the details of Mobility Phase II funding are confirmed."¹⁷ WCC explained that this level of support was needed to allow WCC "to cover its operating expenses less its revenues, to maintain the sites it already operates to provide wireless service to Adak residents, workers, and visitors and to ensure critical services and public safety are not jeopardized."¹⁸

8. In a supplemental filing, on May 4, 2012, WCC alternatively requested a full waiver of the \$3,000 cap for two years and, if feasible, applied from January 1, 2012, the date that the reduction in funding became effective.¹⁹ WCC stated that a full waiver may be easier to implement, is consistent with the Commission's decision in other USF contexts to adopt a delayed transition plan, and would allow WCC to continue to provide critical wireless and broadband services.²⁰

9. The Bureau put WCC's Petition out for comment on April 12, 2012. Through WCC, a number of parties filed in support of WCC's Petition.²¹ GCI filed comments describing its own coverage on Adak Island, but neither supporting nor opposing the Petition, provided that any such waiver would correspondingly increase the Remote Alaska Cap according to section 54.307(e)(3)(v)(A) for the duration

¹³ WCC Petition at pp. 3-4 (reporting "frequent cyclonic storms, winter squalls producing wind gusts in excess of 100 knots, extensive fog storms in the summer, and an average accumulated snowfall of 100 inches").

¹⁴ Comments of General Communication, Inc. (GCI), WC Docket No. 10-90 *et al.* (filed May 14, 2012) (GCI Comments). *See also* Notice of *Ex Parte*, WT Docket No. 10-90 *et al.* (filed June 6, 2012).

¹⁵ WCC Petition at pp. 13-16 and Exhibits 2, 5 and 6; WCC May 21 *Ex Parte* at pp. 3-4 (noting that approximately 10 of its subscribers live in these more remote areas that are not served by GCI).

¹⁶ *Universal Service Administrative Company, Federal Universal Service Support Mechanisms Fund Size Projections for the First Quarter 2012*, App. HC19 (filed Nov. 2, 2011).

¹⁷ WCC Petition at pp. 25-26.

¹⁸ *Id.* at p. 25.

¹⁹ WCC May 4 Supplement.

²⁰ *Id.* at pp. 2-3.

²¹ *See* WCC Petition at Tab A; WCC May 4 Supplement at Attachment A.

of the waiver.²² GCI has not filed for a waiver of the \$3,000 per line per year cap for its coverage of Adak.

II. Discussion

10. As discussed below, we will provide limited, interim support (Interim Support) pending further review of the WCC Petition, supplemental filings, and the AEE Petition. Specifically, we will provide a fixed amount of \$40,104 per month, for at least three months and up to six months or until the Bureau resolves WCC's Petition, whichever comes first. This amount is intended to cover WCC's claimed wireless operating expenses that exceed the sum of its wireless revenues and the USF support that WCC receives under Section 54.307(e). The Interim Support is in addition to the current support WCC receives based on the number of lines reported each quarter. Thus, the Interim Support will not reduce the amount of support available to remote areas in Alaska under the Remote Alaska Cap.

11. The Bureau finds that this limited relief is appropriate to ensure that WCC can maintain its wireless operations until we have a full opportunity to evaluate its Petition based on the totality of relevant information. As described above, WCC provides wireless mobile service to Adak Island, where it claims to be the sole provider of mobile voice service to certain areas, including parts of the Bering Sea and the Aleutian Wilderness, where assertedly it is used by those working for a local employer and the U.S. Fish and Wildlife Service, as well as approximately 10 residents. Based on the costs WCC reports in its Petition for its wireless operations, support calculated at the per-line rates now in effect will not provide sufficient cash for WCC to continue to meet those costs. We also note that WCC is a wholly-owned subsidiary of AEE, the incumbent local exchange carrier in Adak. AEE has also sought waiver of reductions in USF support, but only filed its request for waiver as of May 21.²³ Given the complexity raised by the interrelationships between WCC and AEE, the Bureau has not had adequate time to review the AEE Petition and assess the reasonableness of WCC's claimed operating costs for preserving service to customers. Therefore, the Bureau needs additional time to compile a full record regarding the nature and level of WCC's costs and complete its evaluation of WCC's Petition.

12. We emphasize that the Interim Support we approve today does not prejudge the ultimate disposition of WCC's Petition. Rather, by this action, we provide Interim Support until the Bureau can complete its review of WCC's Petition.²⁴

13. Amount of Support. The Bureau directs USAC to disburse a fixed amount of \$40,104 per month to ensure that WCC can maintain its wireless operations while we complete review of WCC's Petition. This amount reflects the wireless portion of WCC's projected operating expenses that is not covered by the revenues derived from its wireless business or the subscriber-based USF support it receives under the current rules (Capped Support). This amount will be paid on an interim basis in addition to the Capped Support.

14. In determining this to be the appropriate level of Interim Support, Bureau staff relied on cost data provided by WCC regarding its operating expenses,²⁵ excluding depreciation²⁶ and costs related

²² GCI Comments at p. 1.

²³ See n. 2, *supra*.

²⁴ *Id.*

²⁵ WCC April 12 Response and Supplement at Revised Tab 8.

²⁶ Depreciation is excluded because the limited relief granted herein is intended only to offset actual monthly operational expenses.

to its wireline broadband operations, to estimate annual wireless operating expenses of [REDACTED]²⁷ for 2012.²⁸ The Bureau then deducted estimated Capped Support of \$248,400²⁹ and wireless revenues of [REDACTED] to estimate a projected annual shortfall of \$481,243, or \$40,104 per month.

15. The estimate does not incorporate any evaluation of the reasonableness of WCC's current costs, and, in particular, of whether those costs are necessary to preserve service to customers. Bureau staff is currently in the process of evaluating and verifying the reasonableness of both the nature and level of WCC's costs. The Bureau is also examining the allocation of costs between WCC and its parent, AEE, in coordination with WCB's review of the AEE Petition. Our determination here is for the limited purpose of establishing Interim Support and does not reflect any formula we might ultimately use to determine whether WCC's Petition should be granted and, if so, what amount of support would be appropriate.

16. Term of Support. The Interim Support will be paid on a monthly basis, beginning in June 2012, for a period of at least three months and up to six months or when the Bureau acts on WCC's Petition, whichever comes first. The Bureau believes that this limited period of relief will allow WCC to maintain its wireless operations, while affording the Bureau sufficient time to fully evaluate WCC's Petition and related filings. We emphasize that we do not intend to extend support beyond six months and thus expect WCC to provide all information necessary to complete the record promptly.³⁰ This Interim Support does not include the full scope of relief requested by WCC in its May 4 supplemental filing.³¹ WCC seeks support from January 1, 2012 to present to enable it to resume new buildout and increase redundancy in its network, among other things.³² Our goal in providing Interim Support, however, is to maintain the status quo pending a complete review of WCC's Petition. We therefore provide only the amount necessary to achieve that objective. We will consider WCC's request for support from January 1, 2012 in our complete review of its petition.

17. The Bureau believes that the Interim Support will ensure that WCC can continue to provide wireless service until the six-month period has expired or the Bureau rules on its Petition, whichever comes first. Service must be provided over the same coverage area and consistent with the same performance metrics that WCC offers as of the date of this Order. To the extent that WCC elects instead to terminate service, it must so notify the Bureau and coordinate with Bureau staff on a transition plan in order to minimize customer disruption.

18. The Bureau also expects WCC to actively pursue any and all cost cutting and revenue generating measures that it can take in order to reduce its dependency on USF support to the level of the

²⁷ Certain information included in the Petition was filed pursuant to the *Protective Order* in this proceeding and has been redacted. See *Connect America Fund et al.*, WC Docket No. 10-90 *et al.*, Protective Order, 25 FCC Rcd 13160 (Wireline Comp. Bur. 2010).

²⁸ As noted *supra*, WCC provides both wireline broadband and wireless services. As a competitive ETC, it is only eligible to receive support for the wireless portion of its business. The wireline broadband portion of WCC's business is thus not eligible for support.

²⁹ The Bureau computed Capped Support based on 92 lines, the number of lines reported by WCC in projections published by USAC for the first quarter 2012. See n. 17, *supra*. The Bureau then multiplied that amount by \$225 per line per month, at the low end of the projected per line support, when adjusted for the reduction factor (calculated at 10% in an abundance of caution). See n. 8, *supra*.

³⁰ See *USF-ICC Transformation Order* at ¶ 544 (providing schedule for public comment and review of waiver petitions). See also WCC June 10 *Ex Parte*.

³¹ WCC May 4 Supplement at p. 2.

³² *Id.* at pp. 2-3.

cap. In order to compete effectively for support, carriers will need to ensure that their business plans minimize unnecessary costs and maximize opportunities for subscriber revenue.

III. Conclusion

19. For the reasons discussed above, the Bureau hereby authorizes Windy City Cellular, LLC Interim Relief in the amount of \$40,104 per month, for a period of at least three months and up to six months or until the Bureau resolves WCC's Petition, whichever comes first.

20. It is ORDERED pursuant to authority contained in sections 4(i), 4(j) and 254 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 154(j), and 254, and sections 0.131, 0.331, and 1.3 of the Commission's rules, 47 C.F.R. §§ 0.131, 0.331 and 1.3, and paragraph 544 of FCC 11-161, that USAC SHALL MAKE payment to Windy City Cellular, LLC in accordance with the amount, terms and conditions described herein.

21. It is FURTHER ORDERED that, pursuant to section 1.103(a) of the Commission's rules, 47 C.F.R. § 1.103(a), this order SHALL BE effective upon release.

FEDERAL COMMUNICATIONS COMMISSION

Rick Kaplan
Chief, Wireless Telecommunications Bureau